

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HOMELAND INSURANCE COMPANY OF
NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY
LABORATORIES, INC., AND SONIC
HEALTHCARE USA, INC.,

Defendants.

CIVIL ACTION NO.: 1-20-cv-783

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO
EXCEED PAGE LIMIT FOR DISPOSITIVE MOTIONS**

Defendants Clinical Pathology Laboratories, Inc. (“CPL”) and Sonic Healthcare USA, Inc. (“Sonic USA”) (together, “Defendants”) file this Motion for Leave to Exceed the Page Limit for Dispositive Motions and respectfully show the Court as follows:

INTRODUCTION

This case regards whether and to what extent certain medical negligence claims brought against CPL in Ireland (the “ICC Claims”) are covered by insurance policies issued by Plaintiff Homeland Insurance Company of New York (“Homeland”) and whether Homeland investigated and handled those claims in bad faith. The deadline for the amendment of pleadings has now passed [*see* Dkt. 59] and the Court has ruled on Defendants’ motion to dismiss [*see* Dkt. 55].

At this stage, Homeland has four active affirmative claims against Defendants: (1) breach of warranty, (2) reformation, (3) promissory estoppel, and (4) declaratory judgment. Homeland has also raised several defenses to coverage, including (1) the prior notice exclusion, (2) the prior

knowledge exclusion, and (3) misrepresentation. There is also a question as to how the relevant insurance policies cover defense costs incurred in the ICC Claims.

It is Defendants' contention that Homeland's affirmative claims, and the three defenses mentioned above, fail as a matter of law. It is also Defendants' contention that how the relevant insurance policies cover defense costs incurred in the ICC Claims can be determined as a matter of law. Defendants therefore intend to move for summary judgment on those issues. To avoid the confusion that may result from truncating the discussion of the relevant facts, and because the applicable legal principles warranting summary judgment require additional pages to be fully briefed for the Court, Defendants respectfully request leave to exceed the page limit provided by the Local Rules by five pages. Homeland does not oppose that request.

ARGUMENT

The Western District of Texas' Local Rule CV-7 provides that dispositive motions are limited to twenty pages. Defendants intend to move for summary judgment on eight distinct issues—Homeland's four affirmative claims, three of Homeland's defenses, and one issue of insurance policy operation. Each issue requires separate legal and factual analysis. Defendants respectfully request leave to exceed the twenty-page limit imposed by the Local Rules to permit a complete discussion of the relevant undisputed material facts and the legal arguments.

This request for a page limit extension is sought for good cause, in order to fully address the circumstances of the issues described above. Therefore, Defendants respectfully request leave to file the attached Motion for Summary Judgment, which consists of twenty-five pages of briefing. *See Exhibit B.* Defendants' request is not brought to unduly burden the Court nor Homeland, but so that proper consideration may be given to the issues. Counsel for Homeland and Defendants have conferred, and Homeland does not oppose the relief requested in this Motion.

CONCLUSION

WHEREFORE, Defendants request that the Court grant Defendants leave to file the attached Motion for Summary Judgment, and for any other relief to which Defendants are entitled.

Dated: October 8, 2021

Respectfully submitted,

By: /s/ Ernest Martin
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

This is to certify that on October 4, 2021, I conferred with counsel for Plaintiff via email regarding the instant Motion for Leave. Counsel for Plaintiff stated that they did not oppose the relief requested.

/s/ Greg Van Houten

Greg Van Houten

CERTIFICATE OF SERVICE

I hereby certify that, consistent with Local Court Rule CV-5, a true and correct copy of the foregoing was sent to all parties of record pursuant to the Electronic Filing Procedures and the Federal Rules of Civil Procedure on this 8th day of October 2021.

/s/ Ernest Martin

Ernest Martin